

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

RODNEY JAMES DILWORTH, #632515

VS.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NO. 4:21cv659

ORDER ADOPTING REPORT AND RECOMMENDATION
CONCERNING PETITIONER’S MOTION FOR SUMMARY JUDGMENT

The above-entitled and numbered civil action was referred to United States Magistrate Judge Kimberly C. Priest Johnson, who issued a Report and Recommendation (Dkt. #24) concluding that Petitioner’s motion for summary judgment (Dkt. #20) should be denied without prejudice. Petitioner filed objections. (Dkt. #26).

In the objections, Petitioner asserts that other courts have “used summary judgment to dispose of 2254 cases” and then cites an opinion from the Ninth Circuit Court of Appeals, *Davis v. Woodford*, 384 F.3d 628, 634 (9th Cir. 2004). (Dkt. #26, p. 1). Courts in the Eastern District of Texas, however, have taken the view that “[a] motion for summary judgment is a highly disfavored, if not improper, method of adjudicating a petition for writ of habeas corpus.” *Ziolkowski v. Dir.*, TDCJ-CID, No. 5:17-CV-50, 2019 WL 4580425, at *1 (E.D. Tex. May 13, 2019) (citing *Browder v. Dir., Ill. Dep’t of Corr.*, 434 U.S. 257, 269 n.14 (1978); and *United States v. Hurley*, 2005 WL 1473828, at *2 n.5 (N.D. Tex. June 22, 2005)), *report and recommendation adopted*, No. 517CV00050RWSCMC, 2019 WL 4573680 (E.D. Tex. Sept. 20, 2019); *see also Ardoin v. United States*, No. 1:15-CR-119, 2021 WL 3912533, at *2 n.1 (E.D. Tex. Aug. 6, 2021), *report and recommendation adopted in part*, No. 1:19-CV-180, 2021 WL 3884325 (E.D. Tex. Aug. 30, 2021); *Rutherford v. United States*, No. 4:17CR41(1), 2020 WL 1301663, at *1 (E.D. Tex. Feb. 24, 2020), *report and recommendation adopted*, No. 4:17-CR-41(1), 2020 WL 1330648

(E.D. Tex. Mar. 18, 2020), *aff'd in part, appeal dismissed in part*, 810 F. App'x 375 (5th Cir. 2020); *Gordon v. Dir., TDCJ-CID*, No. 4:17CV786, 2018 WL 3060533, at *1 (E.D. Tex. Apr. 25, 2018), *report and recommendation adopted*, No. 4:17CV786, 2018 WL 3046540 (E.D. Tex. June 19, 2018); *Crow v. Dir., TDCJ-CID*, No. 4:16CV545, 2018 WL 2144503, at *1 (E.D. Tex. Mar. 22, 2018), *report and recommendation adopted*, No. 4:16-CV-545, 2018 WL 2129107 (E.D. Tex. May 7, 2018). The Rules do not contemplate dispositive motions in habeas actions. As in the case here, such motions would generally be redundant in light of the settled procedures for resolving the merits of habeas petition. This is especially true where the motion essentially seeks the same relief as that sought in the underlying petition for writ of habeas corpus. The petition and answer will be considered by separate Report and Recommendation.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

It is accordingly **ORDERED** that Petitioner's motion for summary judgment (Dkt. #20) is **DENIED** without prejudice.

SIGNED this 1st day of July, 2022.


 AMOS L. MAZZANT
 UNITED STATES DISTRICT JUDGE